

Remarks/Arguments:

Applicants wish to thank Primary Examiner Patricia Ann Duffy for the express indication (in the final action) of allowable subject matter, as explained further, below. Applicants also wish to thank Primary Examiner Duffy for expressly indicating withdrawal of the rejection under §112, 1st ¶, against claims 20 and 21.

Additionally, applicants wish to thank the examiner for calling their undersigned representative on or about September 10, 2008, to discuss possible amendments to the claims.

Entry of the foregoing claim amendments after final rejection is appropriate. The claim amendments raise no new issues and require no further search or consideration by the examiner, as explained further, below.

Claims 20, 21, 24, 25, 27-30, and 61 are pending, with claims 21, 24, 25, and 27-30 standing allowed, as indicated above.

Claims 1-19, 22, 23, 26, and 31-60 are cancelled, without prejudice or disclaimer.

Claim 20 is amended to correct an apparent clerical error, i.e., by changing "270" (added by the previously filed amendment) to "570." The error is apparent as shown by the disclosure found at page 20, lines 3-8, of the specification and, further, in that the accompanying remarks stated: "The region of SEQ ID NO:2 constituting nucleotides 237-570 is described in the present specification (page 20, lines 3-8)."

New claim 61 limits the "nucleotide chain of at least 30 consecutive nucleotides of SEQ ID NO: 2" of claim 20 (emphasis added) to a "nucleotide chain of 30 consecutive nucleotides of SEQ ID NO: 2" (emphasis added).

Entry of new claim 61—without cancelling a claim—is appropriate after final rejection, as mentioned above. More precisely, applicants understand that the subject matter of claim 61 is allowable—without further consideration or search—pursuant to discussions during the aforesaid telephone conference, between the examiner and applicants' undersigned representative.

Claim 20 is currently rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement, i.e., a new-matter rejection. Reconsideration is requested.

According to the statement of rejection, limitation of claim 20 to "each of" the recited "fragment" and "derived sequence" comprising "a nucleotide chain of at least 30 consecutive nucleotides of SEQ ID NO: 2" constitutes new matter. The rejection alleges that the originally filed disclosure lacks written descriptive support for at least 30 consecutive nucleotides constituting "each of" the recited "fragment" and "derived sequence." Applicants respectfully submit that the statement of rejection is mistaken: written descriptive support does in fact exist for the recited "at least 30 consecutive nucleotides."

Looking at the teaching of the subject application as a whole demonstrates that the Applicant did not intend to limit the size of the derived sequences and fragments of SEQ ID NO: 2 to a chain

comprising a maximum of 30 consecutive nucleotides. Indeed, the specification teaches on page 8, lines 13-23:

The invention also relates to oligonucleotide fragments derived from the sequences SEQ ID No. 1 and SEQ ID No. 2, which can be used as primers in an amplification procedure or as [a] probe in the context of the use of a method of detection, comprising at least 8, advantageously at least 10, more advantageously 14 nucleotides, and preferably up to 30 consecutive nucleotides of the nucleotide chain of SEQ ID No. 1 or SEQ ID No. 2, said primers being capable of hybridizing with the said sequences under high stringency conditions, as defined above.

The aforesaid paragraph expressly describes oligonucleotide fragments of “at least” 8, 10, and 14 consecutive nucleotides as minimum lengths, only. Moreover, lengths “up to 30 consecutive nucleotides” are described only as preferable: Broadly, lengths greater than 30 consecutive nucleotides are clearly encompassed by the “at least” 8, 10, and 14 consecutive oligonucleotides.

Additionally, of the 27 (in total) specific oligonucleotide fragments derived from SEQ ID NO. 1 and SEQ ID NO. 2 that are disclosed in the subject application, 6 (out of the 27) consist of 31 consecutive nucleotides of SEQ ID NO. 1 and SEQ ID NO. 2. These six, 31-mer oligonucleotides are identified as SEQ ID NOS. 12-15, 25, and 26 in the Sequence Listing; and, furthermore, the 31-mer oligonucleotides of sequence SEQ ID NO. 12 and SEQ ID NO. 25 are described in the specification (page 16, lines 29-35) as preferred capture probes for *E. coli* O157:H7 and EHECs, respectively. In other words, the present specification describes, specifically, six oligonucleotide fragments of SEQ ID NOS. 1 and 2 comprising greater than 30 nucleotides, two of which constitute preferred embodiments.

Given the foregoing teachings of the instant specification, the preferred length “up to 30” cannot be construed as a limitation on the broad lengths “at least 8, advantageously at least 10, more advantageously [at least] 14 nucleotides,” allegations to the contrary by the PTO, notwithstanding. In particular, applicants could not have intended “up to 30” a maximum limit since they included six embodiments containing more than 30 consecutive nucleotides, two of which they describe as preferred embodiments. One skilled in the art would not have understood the teachings of the instant specification in such a contradictory manner, i.e., in the face of preferred 31-mer oligonucleotides, the skilled person would not find 30-mer oligonucleotides to be the maximum size.

Accordingly, the written description “preferably up to 30 consecutive nucleotides” found in the specification on page 8, line 19, is correctly interpreted, as intended, to describe only a preferred length of the oligonucleotide fragment recited in the present claims, and not its maximum length, as maintained by the PTO.

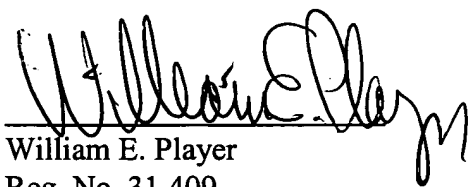
For the foregoing reasons, the rejection of claim 20 under §112, 1st ¶, is overcome. Withdrawal of the rejection appears to be in order.

There being no other unresolved issues, the subject application appears to be in form for immediate allowance.

Favorable action is requested.

Respectfully submitted,

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